

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA, : CASE NO. 3:18CR032

Plaintiff, : JUDGE THOMAS M. ROSE

vs. : GOVERNMENT'S MOTION TO DISMISS

CHRISTOPHER C. ROBERTS, (4) : SUPERSEDING INDICTMENT (DOC.
Defendant. : 233) SOLELY AS TO CHRISTOPHER
: C. ROBERTS

Pursuant to the provisions of Rule 48(a) of the Federal Rules of Criminal Procedure, plaintiff United States of America, by and through its counsel of record, the United States Attorney's Office for the Southern District of Ohio, hereby moves to dismiss the Superseding Indictment without prejudice as it solely applies to the above referenced defendant in this matter. This motion is based upon the attached memorandum of points and authorities, the files and records in this case, and such evidence or argument as may be presented at any hearing on this matter.

DATED: July 7, 2020

Respectfully submitted,

DAVID M. DEVILLERS
United States Attorney

s/Amy M. Smith

AMY M. SMITH (0081712)
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MEMORANDUM OF POINTS AND AUTHORITIES

On December 10, 2019 a Superseding Indictment was returned against defendant CHRISTOPHER C. ROBERTS. The Superseding Indictment (Doc. 233) charged the defendant as follows: Count 2 – aiding and abetting and felon in the possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) and 2. On June 23, 2020, an Indictment (Doc. 2) was filed in 3:20CR062-TMR which charged the defendant with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Federal Rule of Criminal Procedure 48(a) provides that “the government may, with leave of court, dismiss an indictment, information, or complaint.” Fed. R. Crim. Proc. 48(a). “Separation-of-powers concerns generally require a district court to defer to the government’s decision to seek a dismissal of a criminal charge because a denial of the motion would represent an intrusion upon prosecutorial prerogative.” United States v. Gonzalez, 58 F.3d 459, 462 (9th Cir. 1995). Phrased differently, “the decision to dismiss [a complaint] implicates concerns that the Executive is uniquely suited to evaluate, and a district court should be reluctant to deny its request.” Id.; see also United States v. Salinas, 693 F.2d 348, 352 (5th Cir. 1982) (“The Executive [Branch] remains the absolute judge of whether a prosecution should be initiated and the first and presumptively the best judge of whether a pending prosecution should be terminated. The exercise of its discretion with respect to the termination of pending prosecutions should not be judicially disturbed unless clearly contrary to manifest public interest.”).

For these reasons, the Government respectfully submits that it is acting in good faith in filing for a motion to dismiss without prejudice solely as it applies to this defendant. Pursuant to the cases cited above, this Court should recognize the great prosecutorial discretion vested with

the Government and grant the Motion to Dismiss the Superseding Indictment (Doc. 233) as it solely applies to defendant, CHRISTOPHER C. ROBERTS without prejudice.

DATED: July 7, 2020

Respectfully submitted,

DAVID M. DEVILLERS
United States Attorney

s/Amy M. Smith

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served this 7th day of July, 2020, electronically on: Aaron G. Durden, Esq.

s/Amy M. Smith

AMY M. SMITH (0081712)
Assistant United States Attorney